



Twenty-Second Judicial Circuit of Michigan

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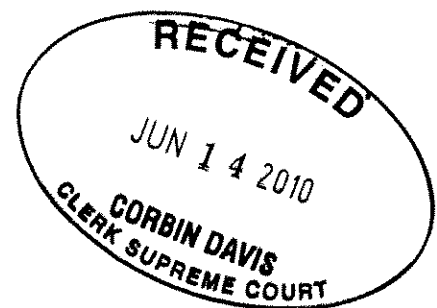
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June 9, 2010

Supreme Court Clerk
Michigan Supreme Court
PO Box 30052
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Re: Proposed Administrative Order # 2010-X



We urge the Michigan Supreme Court not to adopt the proposed change to a portion of Administrative Order # 2010-X regarding Probate Court guidelines for mental illness and judicial admission proceedings. Under the current guideline in Administrative Order 2003-7, 90% of all petitions should be adjudicated within 14 days from the date of filing, and 100% within 28 days. The proposal does not change the 28 day outer limit for 100% of the cases, although it is a challenge to meet that guideline. The proposal that 90% of all petitions should be adjudicated within 7 days is unrealistically short.

Washtenaw County hears many mental health cases because of the number of hospitals in this county with psychiatric units including the Veterans Hospital and the Center for Forensic Psychiatry. Although the majority of these cases are concluded within 7 days, the 90% benchmark does not give sufficient latitude, especially in cases where additional time is needed for an independent clinical evaluation and/or jury trial, each of which is solely the right of the respondent and may be demanded at any time before testimony is received. MCL 330.1458 and 330.1463; MCR 5.740(A), (B). An evaluation can take weeks for respondent's counsel to procure. Some attorneys make a simultaneous demand for the independent clinical evaluation and jury trial, however, some make these demands sequentially, which is allowed under the law, and compounds the delay.

Even in cases without independent evaluation requests and/or jury demands many steps must occur after the petition has been filed before the case is ready for hearing: the court must appoint an attorney for the respondent; the attorney must meet with the respondent; and then the attorney and respondent must have a deferral

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conference with a hospital representative. It is also important to note that MCL 330.1460 provides that "... the subject of a petition shall be allowed adequate time for investigation of the matters at issue and for preparation ..."

An example may be helpful. Washtenaw County sets these hearings on Wednesdays. A petition filed on Tuesday June 1st is set for hearing on Wednesday of the following week, June 9, to allow time for the attorney appointment, client conference, deferral meeting and preparation. This date fulfills the statutory requirement that the court convene a hearing promptly "but not more than 7 days, excluding Sundays and holidays, *after* receipt of" the necessary documents. MCL 330.1452, emphasis added. The proposed 7 day guideline gives no allowance for Sundays or holidays and requires the case be adjudicated *within* 7 days, not 7 days *after* the filing. If an equal number of cases are filed each business day, statistically, approximately 20% of the cases filed would be filed on a Tuesday and of those cases, approximately ½ would exceed the 10% allowance, without even considering the issue of holidays or requests for adjournments.

In the example case, at the June 9th hearing (which already exceeds the 7 day guideline count) the attorney for the respondent may request a 2 week adjournment to procure an independent clinical evaluation. The demand for the evaluation is good cause for the adjournment as the evaluation is respondent's right, and the hearing would be adjourned to June 23rd.

At the hearing on the 23rd, the attorney for the respondent may file a jury demand which is timely any time before testimony is received. In the Washtenaw County Trial Court, because jurors are only empanelled on Mondays, the earliest possible date for jury selection would be the following Monday, June 28th. It is highly probable that date would already be scheduled with other cases, possibly even another mental health jury trial. Mondays are often booked months in advance with trials and evidentiary hearings. If other cases already docketed for trial have to be rescheduled, it may cause inconvenience and additional expense for the rescheduled parties, particularly on short notice, and may cause those cases to go over their respective case flow guidelines as well. Even if the court is able to clear the docket and quickly schedule a trial, the doctors are not always available on such short notice, or the attorneys have conflicts with their schedules.

We appreciate that it is an imposition on the individual as well as an expense to the county or insurance provider to wait for a trial when an individual is being held in a

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hospital pending a hearing. However, many cases involve non-hospitalized individuals on alternative outpatient treatment orders. The attorneys often stipulate to continuation of the existing order pending trial and the individual may be living in the community while awaiting the independent clinical evaluation and/or jury trial. However, despite a stipulation of the parties to an adjournment and the respondent being on an order for continued outpatient treatment, other litigants who have been waiting months for their trial date could be bumped shortly before trial because the guideline's mandate that this case has priority. Others may be incarcerated in a correctional institution and an outpatient treatment order is sought well in advance of their eventual planned release through prisoner reentry programs.

Occasionally parties seek adjournments in an effort to resolve the case. Mediation may be appropriate in some cases and may result in orders best suited to the individual's needs. However, the 28 day guideline limit does not realistically allow for alternative dispute resolution. If the case is adjourned to attempt mediation, should mediation fail, there would be little time left to then adjourn for the independent clinical evaluation or to accommodate the respondent's jury demand, increasing the likelihood that a judge may categorically deny the requests for adjournment to explore settlement or alternative dispute resolution.

Simply put, the extremely short guidelines for mental health cases do not consider the realities of competing needs and demands of the parties and their attorneys as well as limited judicial litigation resources.

It is important that case flow guidelines remain realistic to ensure that they are not disregarded wholesale. We appreciate your consideration of our comments and urge you to keep intact the current 14 day interim guideline for mental health cases.

Very truly yours,



Hon. Donald E. Shelton
Chief Judge, Washtenaw County Trial Court



Hon. Darlene A. O'Brien
Washtenaw County Trial Court